

UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

(Formerly Unit 58)

_____ has satisfactorily completed on-the-job training in the Part or Parts of this Unit specified below.

Certification for Part A: Compliance with the Schedule

Duties

1. Monitor performance by contractor and Government personnel.
2. Respond to contractor requests and perform any other actions required of the contracting officer.
3. Inform the contractor of any problems or potential breaches.
4. Informally resolve problems.

Conditions

Given a contract, the contract administration plan, and any other related document referenced in the contract.

Overall Standard(s)

Correctly identify all performance-related terms and conditions of the contract (i.e., the Contract Schedule), including the statement of work and/or other requirements documents, packaging and marking terms and conditions, inspection and acceptance terms and conditions, delivery or performance schedules, contract administration data requirements, and any other special contract requirements. Monitor actions of contracting officer representatives and other support personnel to preclude constructive changes, excusable delay, and other avoidable postaward problems. Identify and document performance problems; promptly notify the contractor. Accurately assess the impact of potential problems on performance, schedule, and cost. Resolve problems, where possible, without resorting to a formal contractual remedy

Evaluator

Name _____

Title _____

Date _____

UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

Part B: Protecting contractor employee whistleblowers.

Duty	Respond to complaints by contractor employees of reprisals for disclosing substantial violations of law.
Conditions	Given a contract and allegations by contractor employees of substantial violations of law.
Overall Standard(s)	Accurately describe the process for investigating complaints of reprisals for disclosures of “substantial violations of law” and potential remedies. Refer such complaints to the Inspector General.
Evaluator	Name _____
	Title _____
	Date _____

UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

DOCUMENTATION OF OJT ASSIGNMENT(S)
Description of Assignment:
Evaluation:
Completion Date:

UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

DOCUMENTATION OF OJT ASSIGNMENT(S)

Description of Assignment:

Evaluation:

Completion Date:

As needed, insert additional pages to record OJT assignments.

UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
1.602-3		Ratification of unauthorized commitments.
3.9		Whistleblower Protections for Contractor Employees
4.7		Contractor records.
8.203-2 8.203-3		Rejection of orders for jewel bearings.
8.405-3		Inspection of items acquired through the Federal Supply Schedule program.
8.705-4 8.708 8.710-712 8.714		Inspection and acceptance of items ordered from workshops for the blind and other severely handicapped; resolving problems with the orders.
9.307		First article testing.
12.208 & 12.402		Contract quality assurance and acceptance (contracts for commercial items).
42.4		Correspondence and visits with the contractor.
42.11		Production surveillance and reporting.
42.16		Small business contract administration.
43.102(a) 43.104		Notice of constructive changes.
46.1		General policies and responsibilities for inspection and acceptance.
46.401		Government contract quality assurance.
46.5		Acceptance.
46.6		Material Inspection and Receiving Reports.
52.209-3 and 209-4		First article testing.
52.211-5 and 211-7		Responding to contractor requests to substitute used or surplus materials for new materials.
52.211-8 and 211-9		Delivery times.
52.211-16 through 18		Variation in quantity.
52.212-4		Inspection and acceptance terms of contracts for commercial items.
52.242-2		Production progress reports.
52.242-12		Reports of shipments.
52.246-1 through 52.246-9; 52.246-11		Inspection and acceptance clauses.
52.246-15		Certificates of conformance.
52.246-16		Responsibility for supplies.

UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

52.247-29 through 247-44; 52.247-48; 52.247-58; 52.247-59; and 247-61 through 64)		Delivery terms.
--	--	-----------------

UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

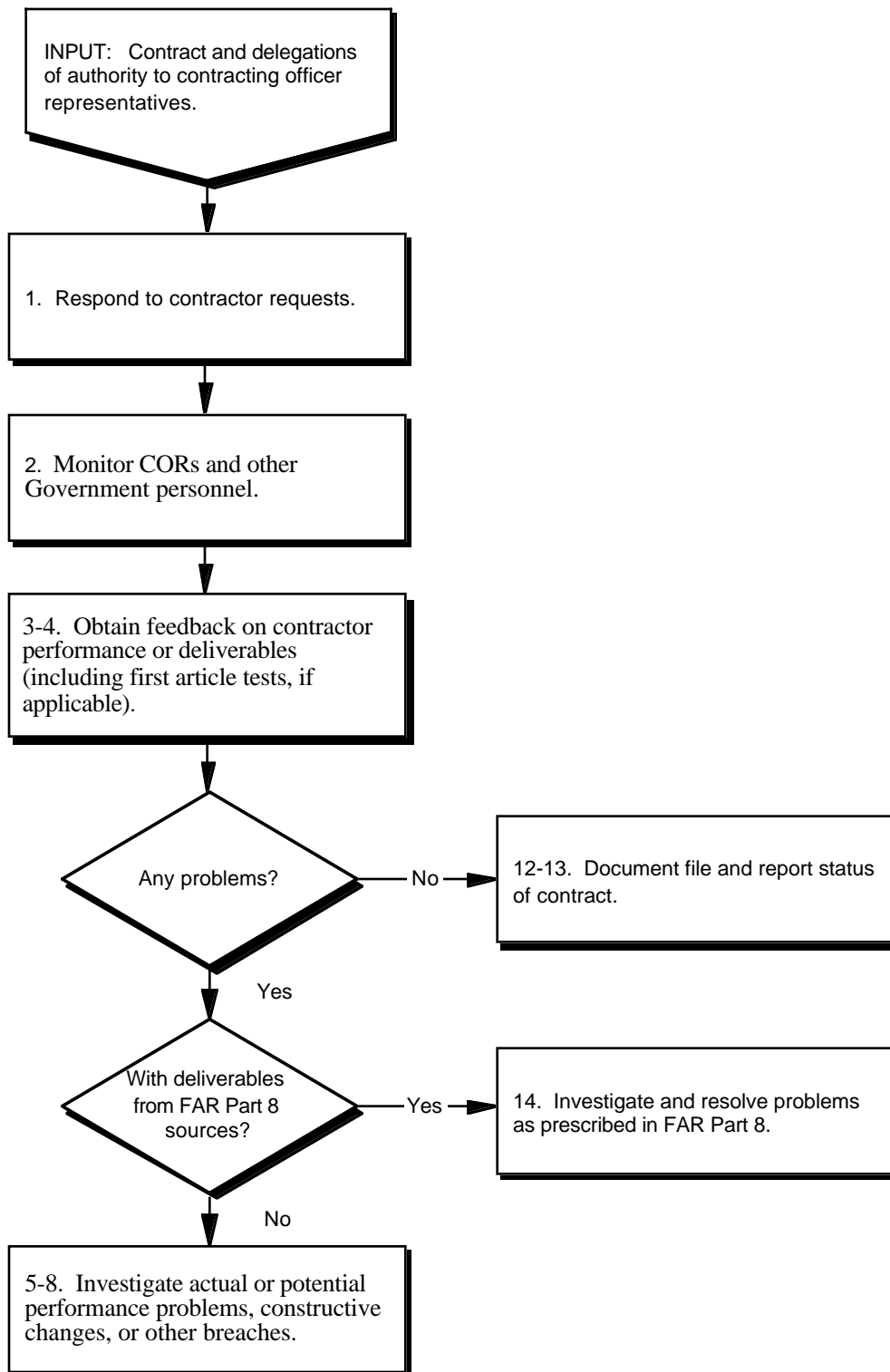
Other KSA's

1. Knowledge of contract terms and conditions that involve inspection, acceptance, or other aspects of contract performance (including any special contractual remedies provided in the clause for breach of that clause), including:

- Supplies Or Services And Prices (Uniform Contract Format (UCF) Section B)
- Descriptions/specifications (UCF C)
- Packaging and marking (UCF D)
- Inspection and acceptance (UCF E) and related FAR clauses.
- Deliveries or performance (UCF F) and related FAR clauses.
- Contract administration data (UCF G)
- Special contract administration requirements (UCF H)
- Contract clauses (UCF I)

Other Policies and References (Annotate As Necessary):

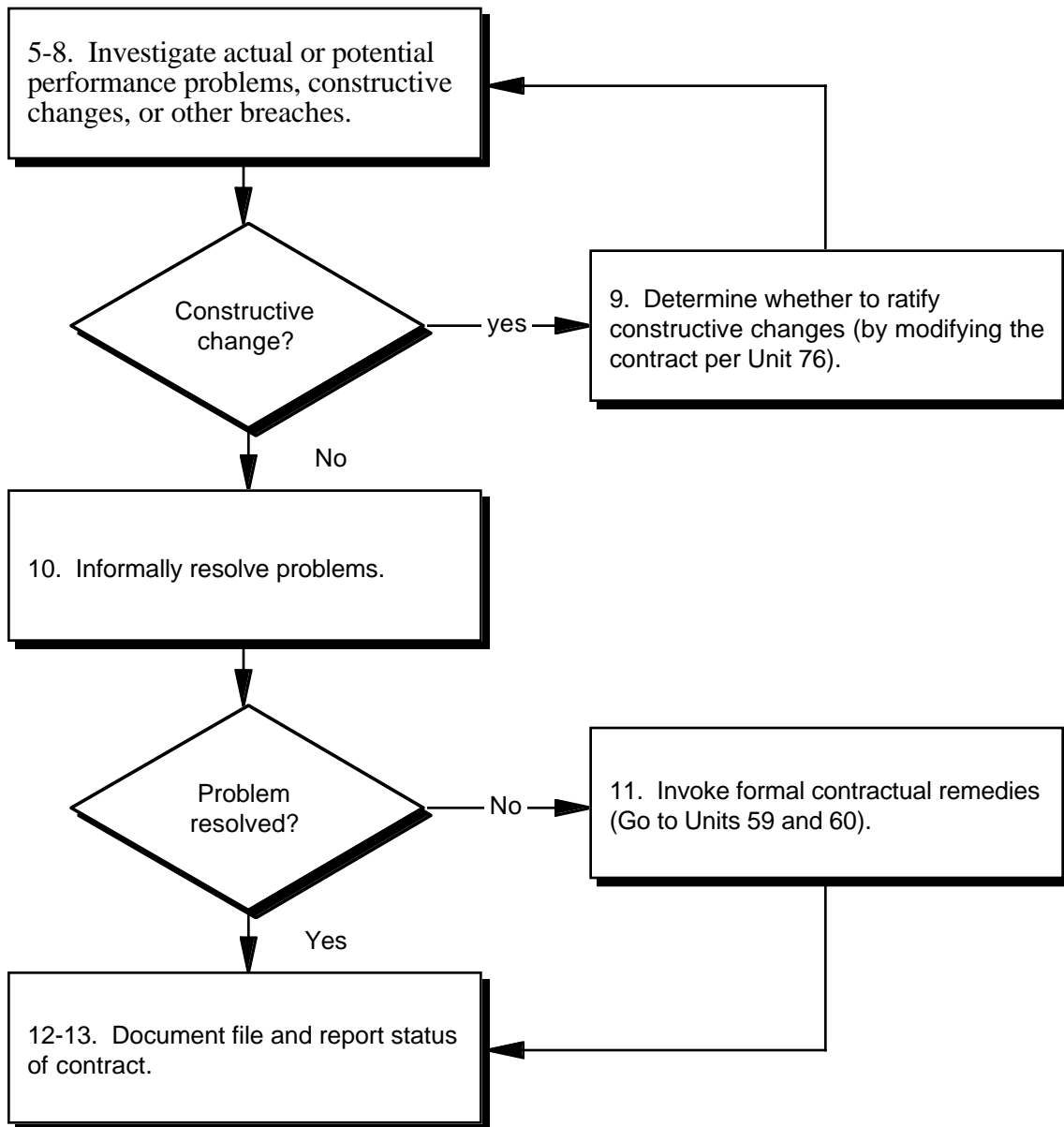
MONITORING, INSPECTION, AND ACCEPTANCE



(Flowchart continued on next page)

MONITORING, INSPECTION, AND ACCEPTANCE

(Flowchart continued from prior page)



UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

Part A: Performance Monitoring and Acceptance

Tasks

Related Standards

<p>1. Respond to contractor requests.</p> <p>Examples:</p> <ul style="list-style-type: none"> • Requests to pay overtime per FAR 52.222-2. • Requests to substitute used or surplus materials for new materials (e.g., FAR 52.210-5 and 210-7), and the like. 	<p>A1. Correctly identify the contract clause (if any) that matches the request. Resolve the request as provided in the clause.</p>
---	---

Contractor Requests

☛ Make every reasonable effort to respond in writing within 30 days to written requests from small business concerns regarding contract administration matters. Otherwise, transmit within that 30 day timeframe written notice of the specific date by which the contracting officer expects to respond. (This requirement does NOT apply to a request for a contracting officer decision under the Contract Disputes Act of 1978). [§42.1601, FAC 90-32, Case 94-730]

Subcontractor Requests for Information

If requested by a subcontractor or supplier under a Federal contract for a non-commercial item, promptly advise the subcontractor or supplier as to—

- Whether the prime contractor has submitted requests for progress payments or other payments under the contract to the Federal Government; and
- Whether final payment under the contract has been made by the Federal Government to the prime contractor.

Exception: Information properly classified under an Executive Order. [§32.112-2, FAC 90-32, Case 94-762]

<p>2. Monitor contracting officer representatives (CORs) and other support personnel.</p> <ul style="list-style-type: none"> • Obtain copies of any written correspondence between the Government and contractor. • Instruct contractors to submit notices of potential constructive changes per FAR 43.104. • Tell CORs and other support personnel to report any verbal exchange with the contractor which involves performance, price, and other substantive contract requirements. • Periodically contact CORs and other support personnel and obtain any required reports (per milestones in the contract administration plan). • Identify other evidence of constructive changes (e.g., through site visits, requests for change orders from the contractor, invoice items, or amounts not contemplated in contract). 	<p>A2. Contact CORs and other support personnel at minimum per schedule in the plan. Obtain information on contacts between contracting officer representatives and the contractor. Identify and, where possible, forestalls constructive changes before official notice from the contractor. Ensure that the CORs properly carry out their roles and responsibilities within the limits of their authority, within time limits established in the contract, and in compliance with FAR 42.1104(d) and 43.102. Correctly identify officials with authority to ratify constructive changes.</p>
--	--

UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

Part A: Performance Monitoring and Acceptance

Tasks

Related Standards

<p>3. Obtain feedback on contractor performance or deliverables.</p> <p>From:</p> <ul style="list-style-type: none"> • In-process inspections (if any). • Pre-acceptance inspections (if any). • Post-acceptance inspection or use. <p>Sources:</p> <ul style="list-style-type: none"> • Contracting officer representatives (e.g., via reports per FAR 42.1106(d)). • Persons responsible for inspection and acceptance (e.g., via inspection or receiving report forms or commercial shipping documents and packing lists). • Requiring activities and/or end users. • Personal site visits/observation of work (scheduled and unscheduled). • Contractor reports (e.g., production progress reports, shop plans, shop travelers, blueprints, stick drawings, wiring diagrams, PERT charts, and subcontract orders). • Subcontractor complaints. 	<p>A3. Conduct monitoring, data collection, inspection, and acceptance as provided in the contract (e.g., FAR clauses at 52.212-1, 212-2, 246-2 through 246-9; 246-11, 246-15, 246-16, 247-29 through 247-44, 247-48, 247-58, 247-61; and 247-62), the contract administration plan, and related FAR provisions (e.g., 46.1, 46.401 and 46.5). Obtain sufficient data to verify satisfactory performance. Recognize any evidence of potential performance problems or other breach by either contractor or Government personnel. Handle correspondence with the contractor and visits to the contractor as prescribed in FAR 42.4.</p>
---	--

Acceptance Based on Contractor Assurances Rather Than Inspection

⌘ Although reserving the right of the Government to inspect deliverables that have been tendered for acceptance, the inspection and acceptance language in FAR §52.212-4(a) assumes that the Government (like commercial buyers generally) will accept items based on seller assurances that the commercial item tendered for acceptance conforms to the contract requirements.¹ This assumption might not be valid when acquiring complex commercial items or commercial items used in critical applications. In such cases, the contracting officer shall include alternative inspection procedure(s) in an addendum and ensure these procedures and the postaward remedies adequately protect the interests of the Government. [§12.402, 46.102, and §52.212-4(a), FAC 90-32, Case 94-970]

In-Process Inspection of Commercial Items

⌘ Do not require offerors to submit to in-process inspection by the Government unless the right to conduct such inspections has been incorporated as an addendum to 52.212-4 as being a customary market practice for the item. Conduct such in-process inspections in a manner consistent with commercial practice. [§46.102 and §46.202-1, FAC 90-32, Case 94-790]

☞ Contracting officers may investigate complaints by subcontractors or suppliers that a prime contractor did not pay them for their work as provided by the payment terms of the subcontract, purchase order, or other agreement. If the complaints are valid, contracting officers may —

- Encourage the contractor to make timely payment to the subcontractor or supplier; or
 - If authorized by the applicable payment clauses, reduce or suspend progress payments to the contractor.
- (This authority already exists and is not new)

Also review the contractor's certifications of payment to those subcontractors or suppliers, if any such certifications had been submitted with payment requests to the Government. If the certification is inaccurate in any material respect, initiate administrative or other remedial action. [§32.112-1, FAC 90-32, Case 94-762]

¹ This assumption is the reason that the clause does not provide for finality of acceptance and for the first time expressly gives the Government the benefit of implied warranties — see *Remedies*.

UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

Part A: Performance Monitoring and Acceptance

Tasks

Related Standards

4. Perform duties related to first article testing (if applicable).	A4. Correctly state the ACO's and CO's responsibilities for first article testing under FAR 9.307 and the applicable clause in Part 52 (e.g., 52.209-3 or 52.209-4).
5. Verify and document evidence of actual or potential performance problems, constructive changes, or other breaches. Potential sources: <ul style="list-style-type: none">• Personal observation.• The contractor.• Contracting officer representatives.• Auditors.• Quality assurance personnel.• Requiring activity and end users.	A5. Correctly identify the terms and conditions at issue (if any). Start with the contractor. Contact only those individuals necessary to verify evidence. Data should be sufficient to identify both the symptoms and causes of any potential problems. Identify and obtain corrections to any Government report (inspection, etc.). Inform the requiring activity.
6. Determine potential impact on cost, delivery, and other requirements.	
7. Determine whether to stop work pending resolution of the problem.	A7. If there is a need to stop work while the problem is being resolved, follow the procedures in Unit 58.
8. Investigate potential or actual delays (if any).	A8. If the contractor claims that a pending or actual delay is excusable, investigate and resolve the issue of excusability as provided in Unit 57.

UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

Part A: Performance Monitoring and Acceptance

Tasks

Related Standards

<p>9. Determine whether to ratify constructive changes.</p>	<p>A9. Only ratify a constructive change when all of the following are true.</p> <ul style="list-style-type: none"> • The Government has already accepted the changed deliverables or the Government otherwise has benefited or will benefit from the change. • The ratifying official has the authority to enter into a contractual commitment. • The resulting change would otherwise have been proper if made by an appropriate contracting officer. • The contracting officer determines the price to be fair and reasonable. • The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence. • Funds are available and were available at the time the unauthorized commitment was made. • The ratification is in accordance with any other limitations prescribed under agency procedures. <p>Modify the contract per Unit 76. Respond to related claims per Unit 81.</p>
---	---

Ratifying Constructive Changes

☛ The ratifying official now is any official with current authority to execute the contract action. Before, the ratifying official was the individual who had authority to execute the contract action at the time such action was necessary. [§1.602-3, FAC 90-32, Case 94-730]

<p>10. Informally resolve problems (where possible).</p> <p>Alternatives to a formal contractual remedy:</p> <ul style="list-style-type: none"> • Informal agreement on corrective steps. • Memorandum of concern to request a written plan from the contractor for correcting performance: <ul style="list-style-type: none"> - Statement of the problem. - Suggested corrective steps. - Response time. - Place for contractor to sign acknowledgment of receipt. • Contract modification (see Unit 76). 	<p>A10. Attempt to reach informal resolutions prior to invoking a formal remedy. Assist the contractor in identifying and solving performance problems.</p>
--	---

UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

Part A: Performance Monitoring and Acceptance

Tasks

Related Standards

11. Invoke formal contractual remedies.	A10. If the contractor is unwilling or unable to resolve a problem with its performance, invoke a formal contractual remedy (by using the procedures in Unit 59/60).
12. Document the file.	
13. Inform the requiring activity and other interested parties of the contract's status.	
14. Investigate and resolve problems resulting from the shipment, reception, inspection, and acceptance of deliverables from required sources. <ul style="list-style-type: none">• The William Langer Plant.• Federal Supply Schedule contractors.• Workshops for the Blind and Other Severely Handicapped.	A14. Correctly describe the procedures for resolving problems with the performance of required sources of supply in FAR 8.203-2, 8.203-3, 8.405-3, 8.705-4, 8.708, 8.710, 8.711, 8.712, and 8.714.

UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

Part B: Protecting contractor employee whistleblowers

Tasks

Related Standards

1. Document and report disclosures made by contractor employees concerning substantial violations of law related to agency contracts.	B1. Correctly identify disclosures concerning “substantial violations of law”. Properly document (in the form of memoranda for record) all disclosures. Report all such disclosures to appropriate agency officials (e.g. the Inspector General (IG), a criminal investigator, procurement fraud advisor etc.).
2. If such advice is requested, advise contractor employees of their rights under FAR subpart 3.9.	B2. Correctly describe such rights and disclosure procedures.
3. Refer contractor employee complaints of reprisal actions to the IG.	

Protecting Contractor Employee Whistleblowers.

☛ FAR Subpart 3.9 implements the whistleblower protections for contractor employees established by sections 6005 and 6006 of the Federal Acquisition Streamlining Act (FASA). This subpart establishes remedies for contractor employees who are discharged, demoted or otherwise discriminated against as a reprisal for disclosing a substantial violation of law related to a contract to an “authorized official of an agency”, an authorized official of the Department, of Justice, or a member of Congress. No clause is prescribed or necessary to make these remedies available to contractor employees. Previously these protections were available only to contracts awarded under title 10 of the United States Code (e.g., by Defense agencies).

For the purpose of this subpart, an “authorized official of an agency” means any officer or employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or the subject matter of the contract. If you are an authorized official under this subpart:

- Document (in the form of memoranda for record) disclosures made by contractor employees concerning substantial violations of law related to agency contracts. Report this matter to appropriate agency officials, e.g. the Inspector General (IG), a criminal investigator, procurement fraud advisor etc.
- If such advice is requested, advise contractor employees of their rights under FAR subpart 3.9.
- Refer contractor employee complaints of reprisal actions to the IG. [FAC 90-30, Case 94-803]

Contractor employees may seek relief under FAR subpart 3.9 when they:

- Have disclosed a substantial violation of law to:

UNIT 56 MONITORING, INSPECTION, & ACCEPTANCE

Part B: Protecting contractor employee whistleblowers

Tasks

Related Standards

- ◇ A member of Congress,
 - ◇ An authorized official of an agency (e.g., an officer or employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or contract), or
 - ◇ An authorized official of the Department of Justice.
- As a result of the disclosure, can show that a reprisal action was taken against them.
 - Report the reprisals to the IG of the agency that awarded the contract.

FAR subpart 3.9 establishes the following investigative process.

1. The contractor employee complains to the IG (the DoD IG for Defense contracts, rather than military service IGs).
2. The IG conducts an initial inquiry.
3. If the complaint merits further investigation, the IG notifies the complainant, contractor, and the Head of the Contracting Activity (HCA).
4. The IG investigates and reports its findings to agency head or designee, with copies of the “Report of Findings” to the complainant, contractor, and HCA.
5. Both the complainant and Contractor have opportunity to respond in writing to Report of Findings to the agency head or designee. Responses must be filed within 30 days (unless the agency head or designee extends the response time).

If the agency head or designee finds for the complainant, the agency head or designee may direct the contractor to do any or all of the following.

1. Take action to abate the reprisal.
2. Reinstate the employee to the position held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would have applied if the reprisal had not been taken.
3. Pay all costs and expenses (including attorneys' fees and expert witnesses' fees) reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

If the contractor fails to comply with order, the agency head may request the Department of Justice to file action for enforcement in U.S. District Court for the district in which the reprisal occurred. The agency head's action is subject to legal review and appeal within the Federal Court system.

FAR subpart 3.9 applies to contracts in existence as of September 19, 1995, for reprisals to Government contractor employees occurring on or after that date. It does not apply to contracts otherwise covered by provisions of 10 U.S.C. 2409a. [FAC 90-32, Case 94-803 — Technical amendment to final rule.]